

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)	
of)	NO. D-1039
CHARLES W. WERNER, M.D.,)	
Respondent.)	OLA 16602

DECISION

This matter came on regularly for hearing before the Board of Medical Examiners, William Green, Hearing Officer of the Office of Administrative Procedure presiding, at Los Angeles, California, on March 6, 1968, at 1:30 p.m. John M. Huntington, Deputy Attorney General, appeared on behalf of the Board, a quorum of which was present. Respondent appeared in person and was represented by Frank R. Gasdia, Attorney at Law of Downey. Evidence both oral and documentary having been introduced and the matter submitted, the Board finds the following facts:

I

Wallace W. Thompson made the accusation herein in his official capacity as Executive Secretary of the Board of Medical Examiners.

II

Respondent, Charles W. Werner, M.D., was issued on or about September 13, 1949, by the Board a certificate to practice medicine and surgery in California. At all times mentioned herein respondent was and now is licensed to practice medicine and surgery in California.

III

In Proceeding No. D-926 before the Board effective November 21, 1966, respondent's certificate was revoked, the revocation was stayed and respondent was placed on probation for a period of five years on certain conditions. This disciplinary action was imposed for unprofessional conduct in that respondent violated statutes regulating narcotics.

IV

On January 12, 1967, in the Superior Court of California for the County of Los Angeles in a proceeding entitled "The People of the State of California v. Charles W. Werner", Case No. 332228, respondent was convicted on his plea of guilty of a violation of Section 11163.5, Health and Safety Code of California (prescribing a narcotic after voluntary surrender of narcotic privileges), a felony. Proceedings were suspended and respondent was placed on probation by the Court for a period of five years. One condition of probation was that respondent commit himself to the psychiatric division of St. Francis Hospital, Lynwood, and remain until medically released and after receiving permission of the probation officer and the court. Respondent's conviction was of a violation of a statute regulating narcotics.

V

The circumstances of respondent's offense set forth in Finding IV are that on or about June 29, 1965, respondent voluntarily surrendered his narcotic privileges. Subsequent to June 29, 1965, respondent on numerous occasions prescribed a narcotic, empirin compound with codeine, also known as methylmorphine, for his mother, Mrs. M. [REDACTED] W. [REDACTED], and in particular on July 13, 1966, July 26, 1966, and September 25, 1966.

VI

In fact, the narcotics set forth in Finding V were not obtained for respondent's mother but were secured by respondent for his own use and self administration. For several years prior to respondent's commitment to St. Francis Hospital on March 10, 1967, respondent had become habituated to the use of various narcotics, dangerous drugs and alcoholic beverages.

VII

The following additional facts were adduced at the hearing:

A. Respondent has practiced in Downey, California, specializing in ophthalmology since December, 1954.

B. Respondent committed himself to the psychiatric department of St. Francis Hospital, Lynwood, California, on March 10, 1967, as a condition of probation after his conviction set forth in Finding IV, and he remained hospitalized there until September 6, 1967, under the care of R. [REDACTED] P. H. [REDACTED], M.D., a psychiatrist. Respondent's probation was modified by the court to allow his release subject to continued psychiatric treatment as an outpatient. Respondent remains under treatment by Dr. H. [REDACTED] presently.

C. Respondent has resumed his practice, which he limits to four or five afternoons weekly. He has no patient demand presently for morning appointments. He performs eye refractions and minor surgical procedures in his office. He does not have surgical privileges at any hospital presently, his privileges having been suspended for cause at two hospitals.

D. Respondent is not now habituated to the use of any narcotic or dangerous drug. He has recovered his normal weight of 185 pounds, having been down as low as 132 pounds. Respondent weighed about 150 pounds upon his admission to St. Francis Hospital.

E. Respondent is heavily indebted for his hospital bill and for professional fees.

F. Respondent has had some problem with the over-use of alcohol beginning in 1964, and he underwent treatment for nine days in a clinic in Seattle, Washington in April, 1965, for this condition.

G. Respondent has been consuming alcoholic beverages in quantity in the recent past, but a painful attack of pancreatitis several weeks ago has caused him to reconsider this use.

H. Respondent has not done too well under psychotherapy, and his psychiatrist has been obliged to settle for mere behavioral improvement. Respondent has been urged by his physician to discontinue the use of alcoholic beverages, and his failure to do so evidences poor judgment.

* * * * *

Pursuant to the foregoing findings of fact, the Board makes the following determination of issues:

I

Sections 2360 and 2361 of the Business and Professions Code of California authorize the Board to take action against the holder of a certificate as a physician and surgeon who is guilty of unprofessional conduct.

II

Respondent is guilty of unprofessional conduct as defined in Section 2384, Business and Professions Code of California, in that he was convicted of a violation of a statute regulating narcotics or dangerous drugs (Section 11163.5, Health and Safety Code).

III

Respondent is guilty of unprofessional conduct as defined in Section 2383, Business and Professions Code of California, in that he has been convicted of a felony (Section 11163.5, Health and Safety Code of California).

IV

Respondent is guilty of unprofessional conduct as defined in Section 2391.5, Business and Professions Code of California, in that he has violated a statute regulating narcotics (Section 11163.5, Health and Safety Code of California).

V

Respondent is guilty of unprofessional conduct as defined in Section 2390, Business and Professions Code of California, in that he became habituated to the use of various narcotics, dangerous drugs and alcoholic beverages.

VI

Each of Determinations II, III, IV and V constitutes a separate cause for disciplinary action against respondent.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The order revoking the certificate of Charles W. Werner, M. D., to practice medicine and surgery in California heretofore made, effective November 21, 1966, is continued in effect, as is the order staying execution of the revocation, and respondent is placed on probation for a period of five (5) years from the effective date hereof upon the following terms and conditions applicable during such probation:

- 1) He shall not renew or attempt to renew his cancelled Federal Narcotic Permit without first securing written approval of the Board.
- 2) He shall report in person to the Board annually at its regular Summer Meeting in Los Angeles commencing in the year 1969; fifteen (15) days' written notice of the time and place of such meeting shall be a condition precedent to the performance of this condition.
- 3) He shall comply with all laws of the United States and of the State of California and its political subdivisions, and with the rules and regulations of the Board of Medical Examiners.
- 4) He shall abstain completely from the use of narcotics, hypnotics or dangerous drugs in any form except when respondent is a bona fide patient of a licensed physician and surgeon and the same is lawfully prescribed for him.
- 5) He shall abstain totally from the use of alcoholic beverages in any form.
- 6) He shall not engage in the solo practice of medicine and surgery, but he shall practice only with or under the direction of a licensed physician or physicians who are themselves not under the same restriction.
- 7) He shall remain under the supervision and direction of a physician of his own choosing until said

physician shall discharge him and in that event he shall obtain and file with the Board the statement of said physician attesting to his discharge from care and to his cure.

This decision shall become effective on the 29th day of APRIL, 1968.

Dated and signed as of the 29th day of MARCH, 1968.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

By Wallace W. Thompson
~~Richard J. Johnson, M.D.~~
~~Secretary-Treasurer~~
WALLACE W. THOMPSON
Executive Secretary

THOMAS C. LYNCH, Attorney General
JOHN M. HUNTINGTON,
Deputy Attorney General
600 State Building
Los Angeles, California 90012
Telephone: 620-2332

Attorneys for Complainant

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION
AGAINST:

CHARLES W. WERNER, M.D.,
Respondent.

NO. D-1039

A C C U S A T I O N

COMES NOW the complainant herein and alleges as
follows:

1. That at the time of executing and filing the
within pleading, the complainant herein was, and now is, the
Executive Secretary of the Board of Medical Examiners (herein-
after Board), and that he performed said acts in his official
capacity and not otherwise.

2. That CHARLES W. WERNER, M.D. (hereinafter
respondent), was, on or about September 13, 1949 issued a
physician's and surgeon's certificate by the Board, and at
all times herein mentioned respondent was, and now is,
licensed to practice medicine and surgery in the State of
California.

3. That respondent's prior record of disciplinary
action in proceedings before the Board of Medical Examiners
is alleged herein to be considered solely, along with other
pertinent factors, in the determination of penalty, if any,

1 which is to be imposed in these proceedings; that respondent
2 has the following record of disciplinary action before the
3 Board of Medical Examiners.

4 That effective November 21, 1966 by decision of
5 the Board, respondent's certificate was revoked with
6 the revocation stayed and respondent being placed on
7 probation for a period of five years on certain
8 conditions; that attached hereto as "Exhibit A" and
9 incorporated herein is a true and correct copy of the
10 Board's decision effective November 21, 1966.

11 4. That at all times mentioned, sections 2360 and
12 2361 of the Business and Professions Code authorized the
13 Board to take action against the holder of a physician's and
14 surgeon's certificate who is guilty of unprofessional conduct.

15 5. That at all times mentioned herein, unprofessional
16 conduct has been defined in section 2384 of the Business and
17 Professions Code as the conviction of violating a statute of
18 this state regulating narcotics or dangerous drugs.

19 6. That respondent is guilty of unprofessional
20 conduct as defined in section 2384 of the Business and
21 Professions Code in that respondent has been convicted of a
22 violation of a statute of this state regulating narcotics
23 or dangerous drugs, as more particularly alleged hereinafter:

24 That on or about January 12, 1967 in the Superior
25 Court of the State of California for the County of
26 Los Angeles in a proceeding entitled "The People of
27 the State of California v. CHARLES W. WERNER" bearing
28 case number 332228, respondent was convicted on his
29 plea of guilty of a violation of section 11163.5 of
30 the Health and Safety Code (prescribing a narcotic
31 after voluntary surrender of narcotic privileges), a

1 felony; that proceedings were suspended and respondent
2 was placed on probation for a period of five years;
3 one condition of probation was that respondent commit
4 himself to St. Francis Hospital's psychiatric division
5 and remain until medically released and after receiving
6 permission of the probation officer and the court; that
7 said conviction was a violation of a statute of this
8 state regulating narcotics.

9 7. That at all times mentioned herein, unprofessional
10 conduct has been defined in section 2383 of the Business and
11 Professions Code as the conviction of either a felony or a
12 crime involving moral turpitude.

13 8. That respondent is guilty of unprofessional
14 conduct as defined in section 2383 of the Business and
15 Professions Code in that the conviction of respondent as set
16 forth in paragraph 6 above is the conviction of a felony and
17 of a crime involving moral turpitude.

18 9. That at all times mentioned herein, unprofessional
19 conduct has been defined in section 2391.5 of the Business
20 and Professions Code as the violation of any statute of this
21 state regulating narcotics and dangerous drugs.

22 10. That respondent is guilty of unprofessional
23 conduct as defined in section 2391.5 of the Business and
24 Professions Code in that respondent has violated section
25 11163.5 of the Health and Safety Code, a statute of this
26 state regulating narcotics in that respondent did prescribe
27 narcotics after respondent had voluntarily surrendered his
28 narcotic privileges as more particularly alleged hereinafter;

29 That on or about June 29, 1965 respondent did
30 voluntarily surrender his narcotic privileges; that
31 subsequent to June 29, 1965 respondent did on numerous
32 occasions prescribe a narcotic, empirin compound with

1 codeine, also known as methyilmorphine, for his mother,
2 Mrs. M. [REDACTED] W. [REDACTED], and in particular on July 13, 1966,
3 July 26, 1966 and September 25, 1966.

4 11. That at all times mentioned herein, unprofes-
5 sional conduct has been defined in section 2390 of the Business
6 and Professions Code as the use of narcotics or dangerous drugs
7 or alcoholic beverages to the extent, or in such manner as
8 to be dangerous or injurious to a person holding a certificate
9 to practice medicine and surgery, or to any other person,
10 or to the public, or to the extent that such use impairs the
11 ability of such person holding such a certificate to conduct
12 with safety to the public the practice authorized by such
13 certificate.

14 12. That respondent is guilty of unprofessional
15 conduct as defined in section 2390 of the Business and
16 Professions Code as more particularly alleged hereinafter:

17 That the narcotics set forth in paragraph 10
18 above were in fact not secured for respondent's
19 mother but were in fact secured by respondent for his
20 own use and were self-administered to respondent;
21 that for several years prior to respondent's committment
22 to St. Francis Hospital on March 10, 1967, respondent
23 had become addicted or habituated to the use of
24 various narcotics, dangerous drugs, and alcoholic
25 beverages.

26 WHEREFORE, complainant prays that the Board of
27 Medical Examiners hold a hearing on the matters alleged herein
28 and following said hearing take such disciplinary action as is
29 provided in section 2372 of the Business and Professions Code
30 or take such other and further action as may be proper.

31 DATED: November 1, 1967.

JMH:ih
ADM LA
67-1519
10-30-67

32 Wallace W. Thompson
WALLACE W. THOMPSON, Executive Secretary
Board of Medical Examiners,
Complainant.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)
and Supplemental Accusation of:)
CHARLES W. WERNER, M.D.,)
Respondent.)

NO. D-926

OLA 11909

DECISION

The attached Proposed Decision of the Hearing Officer
is hereby adopted by the Board of Medical Examiners as its
decision in the above-entitled matter.

This decision shall become effective on the 21st day
of NOVEMBER, 1966.

IT IS SO ORDERED this 21st day of OCTOBER,
1966.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

BY /s/ Shelby M. Hicks, M.D.
SHELBY M. HICKS, M.D.
Secretary-Treasurer

PJD:em

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)
and Supplemental Accusation of:)
CHARLES W. WERNER, M.D.,)
Respondent.)

NO. D-926

OLA 11909

PROPOSED DECISION

This matter came on regularly for hearing before the District Review Committee V of the Board of Medical Examiners on August 3, 1966 and on September 13, 1966 at the hours of 9:00 a.m. in Los Angeles, California, P. J. Doyle, Hearing Officer of the State of California, presiding. The Board was represented by its counsel, John M. Huntington, Deputy Attorney General, and Henry G. Ullerich, Deputy Attorney General. Although respondent was not present at the hearing of August 3, 1966, he was present on the date of the latter hearing and was, at all times, represented by his attorney, Frank R. Gasdia. Evidence, both oral and documentary, having been received and the matter submitted, the aforesaid Committee finds the following facts:

I

Wallace W. Thompson was and is at all times mentioned herein the Executive Secretary of the Board of Medical Examiners of the State of California and made the Accusation and Supplemental Accusation herein in said official capacity and not otherwise.

II

On or about September 13, 1949 and continuously thereafter respondent Charles W. Werner, M.D. was, and now is, licensed to practice medicine and surgery in the State of California.

III

On July 22, 1965, in the Municipal Court of the Downey Judicial District, County of Los Angeles, State of California, in

a proceeding entitled "The People of the State of California v. Charles W. Werner" Case number M37736, respondent was convicted, upon his plea of nolo contendere, of having violated Section 11165 of the Health and Safety Code, (issuance of false and fictitious prescriptions), a misdemeanor. Thereafter, respondent was sentenced to be imprisoned for a period of thirty (30) days in the county jail with the execution of this sentence suspended and respondent placed on summary probation for a period of six (6) months on the condition that he pay a fine of \$100.00. Said conviction concerns the violation of a statute of the State of California regulating narcotics.

IV

Respondent wrote, made and issued three false and fictitious prescriptions for pethidine, also known as demerol, a narcotic regulated by the statutes of this State. Each of said prescriptions was false and fictitious in that it contained false representations, made by respondent, that the narcotic therein prescribed was for the exclusive use of the person whose name and address was placed thereon, to wit, for:

A. [REDACTED] F. [REDACTED], prescription dated February 2, 1965;

E. [REDACTED] W. [REDACTED], prescription dated February 11, 1965;

M. [REDACTED] C. [REDACTED], prescription dated March 1, 1965.

In truth and in fact the narcotics so prescribed were not exclusively for the persons named, but as to each of these three prescriptions some or all of the narcotics therein prescribed were secured by the respondent and dispensed to his wife and other patients.

Further, respondent did prescribe, administer and dispense pethidine, also known as demerol, during the aforesaid period to patients unknown and to his wife without making a record as to each transaction showing the name and address of the patient, the date, the character, and the quantity of the narcotic involved, nor the pathology for which the prescription was issued, administered or dispensed.

V

On or about March 28, 1966, in the Superior Court of the State of California for the County of Los Angeles in a proceeding entitled "The People of the State of California v. Charles W. Werner, M.D." Case number 318707, respondent was convicted on two counts of having violated Section 11163.5 of the Health and Safety Code of the State of California (possessing, administering or prescribing a narcotic after voluntary surrender of narcotic privileges), a felony. Thereafter, proceedings were suspended and respondent placed on probation for a period of five (5) years. Said conviction constitutes a violation of a statute of this State regulating narcotics.

VI

On or about June 29, 1965 respondent did voluntarily surrender his narcotic privileges for a period of one (1) year; subsequent to this date respondent did, on numerous occasions, prescribe narcotics for his wife and in particular on the dates set forth below:

<u>Date and Prescription Number</u>		<u>Type of Narcotic</u>
9-5-65	17959	Percodan aka Dihydrohydroxycodine
9-26-65	19197	Empirin Compound and Codeine No. 4 aka Methylmorphine
1-1-66	97775	Hycodan Syrup aka Dihydrocodeinone
1-26-66	234972	Emperin Compound No. 4 aka Methylmorphine

VII

The following facts were also proven:

1. Respondent, through his counsel, did stipulate to the truth of the allegations contained in the Accusation and Supplemental Accusation.
2. Respondent is forty-four years of age, married and supports himself and his wife, as well as a former wife and their two children by the former marriage. These children are seventeen and fifteen and one-half years of age. He pays alimony of \$100.00 per month to his former wife and child support of \$300.00 monthly.

3. He first met his present wife, S [REDACTED], in 1960 but was never alone in her companionship until January of 1964 or, approximately, one month before he married her in February of 1964.

4. In 1962 or 1963 he heard from a pharmacist that S [REDACTED] was in trouble with the law concerning narcotics. A month or two prior to this second marriage he inquired of the pharmacist as to S [REDACTED] and was told, in effect, by the pharmacist that S [REDACTED] was no longer any problem.

5. During the period of at least thirteen months from May 1964 through June 1965 respondent was under considerable pressure from his wife to prescribe percodan to her. During this period he wrote a total of thirty prescriptions for 1,800 percodan tablets.

6. Other than his medical practice, in which he specializes in ophthalmology, he is not skilled in any other profession, nor in any of the trades.

7. As a result of his last conviction, mentioned above, respondent was placed on probation until May 5, 1971.

* * * * *

Pursuant to the foregoing findings of fact, the District Review Committee V of the Board of Medical Examiners, makes the following determination of issues:

Sections 2360 and 2361 of the Business and Professions Code authorize the Board of Medical Examiners to discipline the holder of a physician's and surgeon's certificate who is guilty of unprofessional conduct. Respondent is the holder of such a certificate and is guilty of unprofessional conduct as defined by each of the following sections of the Business and Professions Code: 2384, 2391.5 (by reason of having violated Sections 11165 and 11225 of the Health and Safety Code), 2384 (by reason of having violated Section 11163.5 of the Health and Safety Code) and 2391.5 (by reason of having violated Section 11163.5 of the Health and Safety Code); each of said determinations of unprofessional conduct constituting a cause of disciplinary action.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The license, heretofore issued to respondent, Charles W. Werner, M.D., by the Board of Medical Examiners to practice medicine and surgery in the State of California is hereby revoked on each of the aforesaid grounds for disciplinary action; provided, however, execution of this order of revocation is hereby stayed and the respondent is placed on probation for a period of five (5) years upon the following terms and conditions:

1. He shall forthwith surrender and cause to be cancelled his Federal Narcotic Permit, if he has not already done so, and shall not renew, nor attempt to renew the same, without first securing the written approval of the Board of Medical Examiners.

2. He shall report in person to the Board of Medical Examiners annually at its regular summer meeting held in Los Angeles, California, commencing in the year 1967.

3. He shall file with the Board of Medical Examiners, in its Sacramento office, at quarterly intervals, an affidavit to the effect that he has fully and faithfully complied with all the terms and conditions of probation herein imposed. The first report shall be due upon the expiration of the first quarter after the effective date of this decision.

4. Respondent shall comply with all laws of the United States and of the State of California and its political subdivisions and with the rules and regulations of the Board of Medical Examiners and shall comply with all the terms of his criminal probation. —

In the event respondent does not comply with the aforesaid terms and conditions of probation during the period of probation, the Board of Medical Examiners, after notice to the respondent and

after providing him with an opportunity to be heard, may terminate said probation effective immediately; or make such other order modifying or changing the terms of probation herein as it deems just and reasonable in its discretion.

Upon expiration of the period of probation, the stay of the order of revocation will become permanent and respondent's license fully restored.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before the Committee, P. J. Doyle, Hearing Officer of the State of California, presiding, on August 3 and September 13, 1966, at Los Angeles, California, and recommend its adoption as the decision of the Board of Medical Examiners.

DATED: September 1966

JAMES F. REGAN, M.D.
Chairman, District Review Committee V